

1 JOHN ALLCOCK (Bar No. 98895)
 john.allcock@dlapiper.com
 2 SEAN C. CUNNINGHAM (Bar No. 174931)
 sean.cunningham@dlapiper.com
 3 ERIN GIBSON (Bar No. 229305)
 erin.gibson@dlapiper.com
 4 ROBERT WILLIAMS (Bar No. 246990)
 robert.williams@dlapiper.com
 5 TIFFANY MILLER (Bar No. 246987)
 tiffany.miller@dlapiper.com
 6 DLA PIPER LLP (US)
 401 B Street, Suite 1700
 7 San Diego, California 92101-4297
 Tel: 619.699.2700
 8 Fax: 619.699.2701

9 ROBERT BUERGI (Bar No. 242910)
 robert.buergi@dlapiper.com
 10 DLA PIPER LLP (US)
 2000 University Avenue
 11 East Palo Alto, CA 94303-2215
 Tel: 650.833.2000
 12 Fax: 650.833.2001

13 Attorneys for Plaintiff
 14 APPLE INC.

15 UNITED STATES DISTRICT COURT
 16 SOUTHERN DISTRICT OF CALIFORNIA

17 APPLE INC.,
 18 Plaintiff,
 19 v.
 20 WI-LAN, INC.,
 21 Defendant.

22
 23
 24
 25 AND RELATED
 26 COUNTERCLAIMS
 27
 28

MARK C. SCARSI (Bar No.
 183926)
 mscarsi@milbank.com
 ASHLEE N. LIN (Bar No.
 275267)
 anlin@milbank.com
 MILBANK, TWEED, HADLEY &
 MCCLOY LLP
 2029 Century Park East, 33rd Floor
 Los Angeles, CA 90067
 Tel: 424.386.4000
 Fax: 213.629.5063

CHRISTOPHER J. GASPAR
 (admitted pro hac vice)
 cgaspar@milbank.com
 MILBANK, TWEED, HADLEY
 & MCCLOY LLP
 28 Liberty Street
 New York, NY 10005
 Tel: 212.530.5000
 Fax: 212.822.5019

CASE NO. 3:14-cv-02235-DMS-BLM
 (lead case);
 CASE NO. 3:14-cv-1507-DMS-BLM
 (consolidated)

**DECLARATION OF SEAN C.
 CUNNINGHAM IN SUPPORT OF
 APPLE INC.'S (1) MOTION FOR
 SUMMARY JUDGMENT AND (2)
 MOTION TO EXCLUDE CERTAIN
 OPINIONS OF VIJAY MADISETTI,
 DAVID KENNEDY AND JEFFREY
 PRINCE**

Date: June 1, 2018
 Time: 1:30 p.m.
 Dept.: 13A
 Judge: Hon. Dana M. Sabraw
 Magistrate Judge: Hon. Barbara L. Major

1 I, Sean C. Cunningham, declare:

2 1. I am a partner with the law firm of DLA Piper LLP (US), counsel of
3 record for Plaintiff Apple Inc. ("Apple") in this case. I have personal knowledge of
4 the facts set forth in this declaration and, if called as a witness, could and would
5 testify competently to these facts under oath.

6 2. Attached as Exhibit 1 is a true and correct copy of an excerpt from the
7 Expert Report of Dr. Vijay Madisetti, dated February 15, 2018. Exhibit 1 is based
8 in part on confidential technical information produced by Apple in this case
9 regarding the operation and functionality of its products. I understand Apple would
10 suffer harm if confidential information regarding the operation or functionality of
11 its products were made public.

12 3. Attached as Exhibit 2 is a true and correct copy of excerpts from the
13 March 28, 2018 deposition transcript of Dr. Vijay Madisetti. Exhibit 2 includes
14 testimony based in part on confidential technical information produced by Apple in
15 this case regarding the operation and functionality of its products. I understand that
16 Apple would suffer harm if confidential information regarding the operation or
17 functionality of its products were made public.

18 4. Attached as Exhibit 3 is a true and correct copy of the Supplemental
19 Expert Report of Dr. Vijay Madisetti, dated March 22, 2018. Exhibit 3 is based in
20 part on confidential technical information produced by Apple in this case regarding
21 the operation and functionality of its products. I understand that Apple would
22 suffer harm if confidential information regarding the operation or functionality of
23 its products were made public.

24 5. Attached as Exhibit 4 is a true and correct copy of excerpts from the
25 January 11, 2018 deposition transcript of Sree Ram Kodali. Exhibit 4 includes
26 testimony regarding confidential Apple information regarding the operation and
27 functionality of its products. I understand that Apple would suffer harm if
28 confidential information regarding the operation or functionality of its products

1 were made public.

2 6. Attached as Exhibit 5 is a true and correct copy of excerpts from the
3 January 4, 2018 deposition transcript of Longda Xing. Exhibit 5 includes testimony
4 regarding confidential Apple information regarding the operation and functionality
5 of its products. I understand that Apple would suffer harm if confidential
6 information regarding the operation or functionality of its products were made
7 public.

8 7. Attached as Exhibit 6 is a true and correct copy of a document
9 produced by Wi-LAN bearing bates number W2235-00443611.

10 8. Attached as Exhibit 7 is a true and correct copy of excerpts of the
11 Expert Report of David J. Teece in the case styled *Wi-LAN USA, Inc. and Wi-LAN*
12 *Inc., v. Apple Inc.*, Case No. 3:13-CV-00798-DMS-BLM, dated June 6, 2014.
13 Exhibit 7 is based in part on confidential financial data and sales information
14 regarding Apple's business operations and Apple's iPhone products. I understand
15 Apple would suffer harm if confidential and proprietary business information about
16 Apple's business and its products were made public.

17 9. Attached as Exhibit 8 is a true and correct copy of excerpts from the
18 January 9, 2018 deposition transcript of Renukadevi Palaniswamy. Exhibit 8
19 includes testimony regarding confidential Apple information regarding the
20 operation and functionality of its products. I understand that Apple would suffer
21 harm if confidential information regarding the operation or functionality of its
22 products were made public.

23 10. Attached as Exhibit 9 is a true and correct copy of an excerpt from the
24 January 9, 2018 deposition transcript of Cole Stewart. Exhibit 9 contains a
25 discussion of confidential Apple testing protocols. I understand Apple would suffer
26 harm if confidential technical information regarding its testing protocols were made
27 public.

28 /////

1 11. Attached as Exhibit 10 is a true and correct copy of a document
2 produced by Wi-LAN bearing bates number W2235-00443127.

3 12. Attached as Exhibit 11 is a true and correct copy of a document
4 produced by Apple bearing bates number APL-WILANDJ_02965009.

5 13. Attached as Exhibit 12 is a true and correct copy of excerpts of the
6 Expert Report of Mr. David Kennedy (Corrected February 26, 2018) and the
7 Supplemental Expert Report of Mr. David Kennedy and certain exhibits thereto.
8 Exhibit 12 is based in part on Apple's confidential financial data and sales
9 information regarding Apple's business operations, licenses and iPhone products. I
10 understand Apple would suffer harm if confidential and proprietary financial data
11 and sales information regarding Apple's business operations, licenses and iPhone
12 products were made public.

13 14. Attached as Exhibit 13 is a true and correct copy of a document
14 produced by Wi-LAN bearing bates number W2235-00110757. Wi-LAN has
15 designated the document Confidential – Attorneys' Eyes Only.

16 15. Attached as Exhibit 14 is a true and correct copy of excerpts of Wi-
17 LAN's Amended Disclosure of Asserted Claims and Preliminary Infringement
18 Contentions, dated May 15, 2017.

19 16. Attached as Exhibit 15 is a true and correct copy of excerpts of Wi-
20 LAN's Second Amended Disclosure of Asserted Claims and Preliminary
21 Infringement Contentions, dated August 10, 2017.

22 17. Attached as Exhibit 16 is a true and correct copy of excerpts from Wi-
23 LAN's Supplemental Responses to Apple's Interrogatory No. 4, dated January 12,
24 2018. Wi-LAN has designated the document Confidential – Outside Attorneys'
25 Eyes Only – Restricted.

26 18. Attached as Exhibit 17 is a true and correct copy of excerpts of the
27 Infringement Expert Report of Dr. Vijay Madisetti in the case styled *Wi-LAN USA,*
28 *Inc. and Wi-LAN Inc., v. Apple Inc.,* Case No. 3:13-CV-00798-DMS-BLM, dated

1 June 6, 2014. Exhibit 17 is based in part on confidential technical information
2 produced by Apple in this case regarding the operation and functionality of its
3 products. I understand Apple would suffer harm if confidential information
4 regarding the operation and functionality of its products were made public.

5 19. Attached as Exhibit 18 is a true and correct copy of excerpts of an
6 agreement between Wi-LAN Inc. and Intel Corporation that Wi-LAN produced in
7 this case. Wi-LAN has designated the document Confidential – Outside Attorneys’
8 Eyes Only – Restricted.

9 20. Attached as Exhibit 19 is a true and correct copy of email
10 correspondence from Robert Cote to Sean Cunningham, dated December 14, 2017.
11 The email is designated Confidential – Attorneys’ Eyes Only – Restricted.

12 21. Attached as Exhibit 20 is a true and correct copy of excerpts of a
13 document produced by Apple bearing bates number APL-WILANDJ_02937359.
14 Exhibit 20 contains Apple confidential business and financial information regarding
15 the development and sale of components used in Apple products. I understand
16 Apple would suffer harm if confidential business and financial information
17 regarding the development and sale of components used in its products were made
18 public.

19 22. Attached as Exhibit 21 is a true and correct copy of excerpts of a
20 document produced by Apple bearing bates number APL-WILANDJ_02937302.
21 Exhibit 21 contains Apple confidential business and financial information regarding
22 the development and sale of components used in Apple products. I understand
23 Apple would suffer harm if confidential business and financial information
24 regarding the development and sale of components used in its products were made
25 public.

26 23. Attached as Exhibit 22 is a true and correct copy of a printout of a
27 document produced by Apple bearing bates number APL-WILANDJ_02935613.
28 Exhibit 22 contains Apple confidential financial information regarding Apple’s

1 purchase of chipsets from Intel and Qualcomm. I understand Apple would suffer
2 harm if confidential financial information regarding chipset component sales prices
3 were made public.

4 24. Attached as Exhibit 23 is a true and correct copy of excerpts of Wi-
5 LAN's Disclosure of Asserted Claims and Preliminary Infringement Contentions,
6 dated January 12, 2015.

7 25. Attached as Exhibit 24 is a true and correct copy of excerpts of the
8 Rebuttal Expert Report of R. Michael Buehrer Regarding Non-Infringement of U.S.
9 Patent Nos. 8,457,145, 8,462,723, 8,462,761, and 8,615,020, dated March 15, 2018.
10 Exhibit 24 is based in part on Dr. Buehrer's analysis of and excerpts from Apple
11 employee depositions regarding Apple's confidential product testing protocols and
12 procedures. I understand that Apple would suffer harm if confidential information
13 regarding product testing protocols and procedures were made public.

14 26. Attached as Exhibit 25 is a true and correct copy of Exhibit A to
15 Apple's Supplemental Responses and Objections to Wi-LAN Inc.'s First Set of
16 Interrogatories (Nos. 1-5, 7), dated July 28, 2017. Exhibit 25 contains Apple
17 confidential and proprietary information regarding components of Apple's iPhone
18 products. I understand Apple would suffer harm if confidential and proprietary
19 information regarding components of Apple's products were made public.

20 27. Attached as Exhibit 26 is a true and correct copy of a document
21 produced by Wi-LAN bearing bates number W2235-00446586.

22 28. Attached as Exhibit 27 is a true and correct copy of a document
23 produced by Wi-LAN bearing bates number W2235-00441716.

24 29. Attached as Exhibit 28 is a true and correct copy of a document
25 produced by Apple bearing bates number APL-WILANDJ 00669045. Exhibit 28
26 contains a third-party notice that does not permit its public disclosure. Apple has
27 therefore included this document in its list of supporting documents to seal in
28 connection with its motions.

1 30. Attached as Exhibit 29 is a true and correct copy of a document
2 produced by Apple bearing bates number APL-WILANDJ_00215168. Exhibit 29
3 contains a third-party notice that does not permit its public disclosure. Apple has
4 therefore included this document in its list of supporting documents to seal in
5 connection with its motions.

6 31. Attached as Exhibit 30 is a true and correct copy of excerpts from the
7 April 18, 2018 deposition transcript of David Kennedy. Exhibit 30 contains
8 testimony regarding Apple's confidential financial data and sales information
9 regarding Apple's business operations and products. I understand Apple would
10 suffer harm if Apple's confidential financial data and sales information regarding
11 Apple's business operations and products were made public.

12 32. Attached as Exhibit 31 is a true and correct copy of excerpts of a
13 document produced by Apple bearing bates number APL-WILANDJ_00244317.
14 Exhibit 31 includes Apple confidential market research and analysis regarding
15 Apple's products. I understand Apple would suffer harm if confidential market
16 research and analysis regarding Apple's products were made public.

17 33. Attached as Exhibit 32 is a true and correct copy of excerpts of the
18 Report of Prof. Jeffrey T. Prince, dated February 15, 2018. Exhibit 32 is based in
19 part on Apple confidential financial data and sales information for Apple's iPhone
20 products. I understand Apple would suffer harm if Apple's confidential financial
21 data and sales information for Apple's iPhone products were made public.

22 34. Attached as Exhibit 33 is a true and correct copy of excerpts from the
23 April 5, 2018 deposition transcript of Jeffrey T. Prince. Exhibit 33 includes
24 testimony based in part on Apple confidential financial data and sales information
25 regarding Apple's business operations and iPhone products. I understand Apple
26 would suffer harm if Apple confidential financial data and sales information
27 regarding Apple's business operations and iPhone products were made public.
28

1 35. Attached as Exhibit 34 is a true and correct copy of excerpts from the
2 Transcript of Jury Trial Before the Honorable Rodney Gilstrap, United States
3 District Judge, in the case styled *Wi-LAN v. Apple, Inc., et al*, Civil Docket No.
4 2:12-CV-600, dated October 17, 2013, which was Exhibit 6 to the April 5, 2018
5 deposition of Jeffrey T. Prince.

6 36. Attached as Exhibit 35 is a true and correct copy of excerpts from the
7 Transcript of Jury Trial Before the Honorable Rodney Gilstrap, United States
8 District Court, in the case styled *ContentGuard Holdings, Inc. v. Apple, Inc.*, Civil
9 Docket No. 2:13-CV-1112-JRG, which was Exhibit 7 to the April 5, 2018
10 deposition of Jeffrey T. Prince.

11 37. Attached as Exhibit 36 is a true and correct copy of excerpts from the
12 Expert Report of Scott James Savage in the case styled *Wi-LAN USA, Inc. and Wi-*
13 *LAN Inc., v. Apple Inc.*, Case No. 3:13-CV-00798-DMS-BLM, dated June 6, 2014.
14 Exhibit 36 is based in part on Apple confidential financial data and sales
15 information for Apple's products. I understand Apple would suffer harm if
16 confidential financial data and sales information for Apple's products were made
17 public.

18 38. Attached as Exhibit 37 is a true and correct copy of excerpts from Wi-
19 LAN's Supplemental Response to Apple's Interrogatory No. 18, dated December
20 22, 2017.

21 39. Attached as Exhibit 38 is a true and correct copy of excerpts from the
22 April 13, 2018 deposition transcript of Scott T. Demarest. Wi-LAN has designated
23 the transcript "Confidential – Restricted Outside Attorneys' Eyes Only,"
24 "Qualcomm - Outside Counsels' Eyes Only - Confidential Source Code," and "Intel
25 Confidential - Outside Counsels' Eyes Only - Confidential Source Code."

26 40. Attached as Exhibit 39 is a true and correct copy of a document
27 produced by Wi-LAN bearing bates number W2235-00112969. Wi-LAN has
28 designated the document Confidential – Outside Counsel Restricted.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on May 1, 2018 at San Diego, California.

/s/ Sean C. Cunningham
Sean C. Cunningham

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants.

/s/ Sean C. Cunningham
Sean C. Cunningham

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